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1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON
2
3 UNITED STATES BANKRUPTCY COURT
4
5 SOUTHERN DISTRICT OF NEW YORK

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5 In Re:

7 Chapter 11
8
9
10 LEHMAN BROTHERS Case No. 08-13555 (JMP)
11 HOLDINGS, INC. et al., (Jointly Administered)
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Debtors.

HIGHLY CONFIDENTIAL

DEPOSITION OF PATRICK CLACKSON

Friday, September 4, 2009

At: 9:00 am

Taken at:

Barclays

1 Churchill Place

London

United Kingdom

Reported by: AILSA WILLIAMS
Certified LiveNote Reporter

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1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON
2 A P P E A R A N C E S

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4 Attorneys for Lehman Brothers, Inc.
5 222 East 41st Street
6 New York, NY 10017-6702
7 BY: JAYANT W. TAMBE, ESQ
8 BRIDGET CRAWFORD, ESQ

9 BOIES, SCHILLER & FLEXNER, LLP
10 Attorneys for Barclays Capital and the
11 Witness
12 5301 Wisconsin Avenue N.W
13 Washington D.C 20015
14 BY: HAMISH HUME
15 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES,
16 LLP
17 Attorneys for the Creditors Committee
18 16 Old Bailey
19 London, United Kingdom EC4M 7EG
20 BY: MATTHEW BUNTING, ESQ.

21 HUGHES, HUBBARD & REED, LLP
22 Attorneys for the SIPA Trustee
23 1775 I Street, N.W
24 Washington D.C. 20006-2401
25 BY: JOHN F. WOOD

26 Also Present:

27 PHILIP E. KRUSE: Alvarez & Marsal
28
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1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. I have handed you a one page document
22 marked Exhibit 362A. Take a moment to review it.
23 Please let me know when you are done.

24 A. I have reviewed it.

25 Q. The bottom e-mail is an e-mail from

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2 James Trevelyan.

3 A. Yes, he is a member of the Barclays
4 corporate development group.

5 Q. To you, and he is again discussing
6 negative goodwill, and in particular the comp and
7 cure provisions. Do you see that?

8 A. Yes.

9 Q. He states in his second paragraph of his
10 e-mail:

11 "We understand broadly that the negative goodwill
12 arises because the 2.25 cure payment and 2.0 comp provision
13 won't be valued at that amount but instead circa 1.3 or
14 Cl.3."

15 Do you see that?

16 A. Yes.

17 Q. Do you understand that as circa 1.3?

18 A. Yes.

19 Q. Approximately 1.35. "The difference
20 (2.95) giving rise to net assets for which we pay
21 250 million." Is that how you understand that?

22 A. Yes, I think that is right.

23 Q. "Leading to a negative goodwill of
24 \$2.7 billion." Is that right?

25 A. Yes.

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2 Q. Was his description of the source of the
3 negative goodwill accurate in your view?

4 A. In many ways you can calculate things in
5 different ways, but in terms of the estimates we
6 had at that time, and looking at the balance sheet
7 which we thought under the agreement we were
8 taking on, the assets and the liabilities we were
9 taking on, that was the estimate. I suppose there
10 was a lot of confusion, as I said, a lot of
11 different versions, things changing by the minute
12 over time, and going on for quite a long period of
13 time. So I suppose what I tried to share was what
14 was my provisional understanding at the time,
15 which was in terms of -- which I think I have set
16 out here, in terms of the compensation we were
17 taking, and we had to take a lot of liabilities to
18 people, it looks like my understanding at the time
19 was -- I mean all these things developed and
20 changed but I was saying here I thought in terms
21 of what we accounted for was the cash portion
22 rather than the deferred portion of the bonuses.
23 So that would be the compensation in the opening
24 balance sheet, which as I said I think I mentioned
25 earlier I was erroneous in my estimate on that,

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2 and on the cure payments we had potential
3 liabilities, and I hoped at the time that we would
4 be able to find ways of negotiating with our
5 suppliers, so we were taking on suppliers and we
6 would find ways of negotiating with our suppliers.
7 So that because of the existing relationship of
8 Barclays and the combined relationship of the
9 combined Barclays and Lehman group, that the cure
10 payments could be kept to a low level. So that
11 was my hope at that point.

12 Q. And to date what has Barclays paid out
13 in the cure payments related to this transaction?

14 A. I can't precisely remember. I think
15 again it is -- I am sure we disclose it in our
16 financials.

17 Q. Does a number around \$300 million ring
18 a bell?

19 A. Not really, but it could be.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]